

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03
NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 SAJ-01
EB-07 TRSE-00 ACDA-07 /073 W
----- 065644 /10

R 200930Z DEC 76
FM USMISSION USBERLIN
TO SECSTATE WASHDC 3614
AMEMBASSY BONN
INFO AMEMBASSY BERLIN UNN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2718

E.O.11652: GDS
TAGS: PFOR, WB, US, UK, FR, GW
SUBJECT: SOVIET OBJECTION TO LAWS GOVERNING ENTRY AND
RESIDENCE IN WEST BERLIN FOR SOVIET CITIZENS

REFS: A) USBER 2364; B) USBER 2636

1. SUMMARY: APPROXIMATELY 30 SOVIET CITIZENS TEMPOR-
ARILY IN WEST BERLIN TO WORK ON SOVIET TRADE EXHIBITION
EXCEEDED 31-DAY TEMPORARY RESIDENCE PERIOD PERMITTED
UNDER WEST BERLIN AND ALLIED LEGISLATION, AND WERE
OBLIGED TO LEAVE WEST BERLIN DECEMBER 13. AFTER TWO
DAY ABSENCE, 17 SOVIETS HAVE RETURNED TO WEST BERLIN
THROUGH LEGAL LOOPHOLE AND WILL NOW REMAIN HERE TO
COMPLETE DISMANTLING WORK AT FAIR GROUNDS. SOVIETS
HAVE COMPLAINED STRENUOUSLY, IF INFORMALLY, ABOUT
SHORT LENGTH OF TIME SOVIET CITIZENS MAY REMAIN IN
WESTERN SECOTRS OF BERLIN UNDER EXISTING LEGISLATION.
THEY HAVE ALSO REITERATED THEIR COMPLETE UNWILLING-
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NESS TO ACCEPT FRG VISAS REQUIRED FOR STAYS IN WEST
BERLIN EXCEEDING 31 DAYS. ALLIED MISSIONS CONSIDERING
DESIRABILITY OF AMENDING EXISTING BK/O WHICH REGU-
LATES SHORT VISITS BY EASTERN EUROPEANS TO WEST
BERLIN TO PRECLUDE SOVIETS EVADING INTENT OF WEST
BERLIN RESIDENCE LAW AND ALLIED BK/O IN FUTURE. END

SUMMARY.

2. IN MID-NOVEMBER, OVER 200 SOVIET CITIZENS CAME TO WEST BERLIN TO SET UP, RUN AND DISMANTLE WEEK-LONG TRADE EXHIBITION (REF B). ALL SOVIETS INVOLVED IN TRADE EXHIBITION ENTERED WEST BERLIN UNDER PROVISIONS OF BK/O(67)7. PARAGRAPH 2 OF BK/O(67)7 PROVIDES THAT SOVIET CITIZENS PARTICIPATING IN TRADE FAIRS AND EXHIBITIONS, SPORTING AND CULTURAL EVENTS, AND TOURISM ARE PERMITTED TO ENTER WEST BERLIN WITHOUT A PRIOR VISA AND MAY REMAIN FOR PERIOD UP TO 31 DAYS PROVIDED THEY NOTIFY THE WEST BERLIN POLICE IMMEDIATELY UPON ARRIVAL. THERE IS NO PROVISION UNDER ALLIED OR BERLIN LEGISLATION TO EXTEND SUCH A STAY. TO REMAIN IN WEST BERLIN FOR PERIODS IN EXCESS OF 31 DAYS SOVIET CITIZENS (OTHER THAN CERTAIN CATEGORIES OF SOVIET OFFICIALS ASSOCIATED WITH THE OFFICIAL PRESENCE IN WEST BERLIN ESTABLISHED BY THE QA AND THE SOVIET EMBASSY IN EAST BERLIN) MUST OBTAIN A PRIOR VISA FROM AN FRG CONSULAR OR DIPLOMATIC MISSION.

3. ON DECEMBER 9 SOVIET TRADE OFFICE IN WEST BERLIN CALLED MISSION AND SAID THAT APPROXIMATELY 30 TRADE EXHIBITION EMPLOYEES WERE ABOUT TO REACH END OF THEIR PERMITTED 31-DAY STAY, AND ASKED HOW THE MATTER SHOULD BE HANDLED. AFTER CONSULTING WITH UK AND FRENCH ALLIES, MISSION INFORMED SOVIET TRADE OFFICE THAT SOVIETS CONCERNED WOULD HAVE TO LEAVE WEST BERLIN WHEN THEIR 31 DAYS WERE UP. SOVIET TRADE
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ASSOCIATION DIRECTOR GRIGORIAN, AND SUBSEQUENTLY SOVIET EMBASSY ACTING PROTOCOL OFFICER TYUTYUNOV, APPEALED ALLIED DECISIONS AND ASKED THAT 19 OF EMPLOYEES IN QUESTION BE PERMITTED TO REMAIN IN WEST BERLIN FOR AN ADDITIONAL 15 TO 17 DAYS BEYOND 31 DAYS ALLOWED BY BK/O. MISSION OFFICER RESPONDED THAT THE LAWS AND REGULATIONS IN EFFECT IN WESTERN SECTORS DID NOT PROVIDE FOR SUCH AN EXTENSION. FURTHER, IT HAD COME TO OUR ATTENTION THAT SEVERAL OF THE SOVIETS FOR WHOM THE EMBASSY AND TRADE OFFICE WERE SEEKING EXTENSION HAD ALREADY BEEN IN WEST BERLIN FOR 45 DAYS, MAKING REQUEST FOR ADDITIONAL 15 DAYS TOTALLY OUT OF QUESTION. WHEN SOVIETS CLAIMED THEY COULD FIND NO HOTEL SPACE IN EAST BERLIN ON SUCH SHORT NOTICE, HOWEVER, MISSION DID AGREE TO PERMIT SOVIET EMPLOYEES TO REMAIN THROUGH WEEKEND OF DECEMBER 11-12, BUT SAID THEY MUST LEAVE PROMPTLY THEREAFTER. SOVIET PERSONNEL ACTUALLY LEFT WEST BERLIN

DECEMBER 12. TWO DAYS LATER, HOWEVER, SEVENTEEN FAIR EMPLOYEES RETURNED TO WEST BERLIN TO BEGIN A NEW 31-DAY PERIOD OF RESIDENCE. THIS MANEUVER, WHILE VIOLATING SPIRIT OF BK/O(67)7, IS NOT EXCLUDED BY IT.

4. IN DISCUSSING ISSUE WITH USBER PROTOCOL OFFICER, TYUTYUNOV BOTH ON DECEMBER 11 WHEN HE WAS SEEKING TO GET EXTENSION FOR FAIR EMPLOYEES AND ON DECEMBER 15 AFTER FAIR EMPLOYEES HAD RETURNED TO WEST BERLIN, ARGUED THAT THE ONLY "SENSIBLE" SOLUTION TO THE PBOBLEM WOULD HAVE BEEN FOR ALLIES TO AGREE TO WAIVE PROVISIONS OF BK/O AND TO LET THE FAIR WORKERS REMAIN TO COMPLETE THEIR WORK. TYUTYUNOV AT NOTIME CONTESTED THE VALIDITY OF THE BK/O, NOR DID HE ATTEMPT TO ARGUE THAT IT WAS NOT APPLICABLE TO THE FAIR WORKERS. HE SIMPLY WANTED ALLIES TO WAIVE IT. IN SIMILAR VEIN WHEN MISSION PROTOCOL OFFICER POINTED OUT THAT ALLIES EXPECTED THAT SOVIETS WOULD RESPECT CONFIDENTIAL

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BK/O TYUTYUNOV AGREED SOVIETS HAD NO INTENTION OF BREAKING THE RULES (THOUGH HE HAD ALREADY DONE SO). HE WENT ON TO PROTEST VIGOROUSLY THE REQUIREMENT

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INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
USIA-06 EB-07 TRSE-00 ACDA-07 /073 W
----- 065786 /10

R 200930Z DEC 76
FM USMISSION USBERLIN
TO SECSTATE WASHDC 3615
AMEMBASSY BONN
INFO AMEMBASSY BERLIN UNN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 2718

OF AN FRG VISA TO COME TO WEST BERLIN FOR MORE THAN 31 DAYS. HE INSISTED THAT UNDER NO CIRCUMSTANCES WOULD A SOVIET CITIZEN EVER ACCEPT AN FRG VISA FOR THAT PURPOSE. HE WENT ON TO ARGUE THAT THE ALLIES WERE IN FACT REMISS FOR HAVING PERMITTED LEGISLATION TO EXIST ON WEST BERLIN'S BOOKS WHICH REQUIRE SOVIETS TO OBTAIN FRG VISA IN ORDER TO COME TO WEST BERLIN.

5. MISSION PROTOCOL OFFICER RESPONDED ON BOTH OCCASIONS BY NOTING THAT LAW WAS QUITE CLEAR ON ALL POINTS AND THAT IT HAD COMPLETE ALLIED APPROVAL. HE TOLD TYUTYUNOV, WHO HAD EXPRESSED DOUBTS THAT ALLIES TRULY APPRECIATED SOVIET POSITION, THAT US WAS QUITE FAMILIAR WITH SOVIET VIEWS ON THE MATTER AND UNDERSTOOD THAT NOT ACCEPTING VISA FROM FRG OFFICE WAS VIEWED BY SOVIETS AS MATTER OF PRINCIPLE. HE ALSO STRESSED THAT THERE WERE MATTERS OF PRINCIPLE INVOLVED ON CONFIDENTIAL

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ALLIED SIDE AND THAT WE EXPECTED SOVIETS TO ABIDE BY LAWS AND PROCEDURES IN QUESTION. TYUTYUNOV SUMMED UP BY STRESSING AGAIN THAT FOR THE SOVIETS THE KERNEL OF THEIR OBJECTION TO PRESENT VISA AND RESIDENCE PERMIT ISSUANCE PROCEDURES WAS FRG VISA REQUIREMENT.

6. LATEST SOVIET OBJECTION TO REQUIREMENT OF FRG VISA FOR EASTERN EUROPEAN AND SOVIET NATIONALS WISHING TO REMAIN IN WEST BERLIN FOR MORE THAN 31 DAYS CANNOT BE GLOSSED OVER SINCE SOVIETS NOW DIRECTLY INVOLVED WHEREAS IN PREVIOUS CASE (REF A) THEY WERE NOT, AS WE SEE IT THERE ARE FOUR POSSIBLE ALTERNATIVES FOR DEALING IN FUTURE WITH THE PROBLEM POSED BY VISITING SOVIETS WISHING TO REMAIN IN WEST BERLIN FOR MORE THAN 31 DAYS. (A) WE COULD NOTHING AND PERMIT THE VISITING SOVIETS TO RETURN TO EAST BERLIN EVERY 31 DAYS FOR 24 HOURS AND THEN RESUME THEIR RESIDENCE IN WEST BERLIN. (B) WE COULD AMEND THE BK/O TO PROVIDE MEANS TO EXTEND A VISIT BEYOND THE INITIAL 31-DAY LIMIT. (C) WE COULD AMEND THE BK/O TO PERMIT SOVIETS OR EAST EUROPEANS TO REMAIN IN WEST BERLIN FOR MUCH LONGER PERIODS OF TIME, PERHAPS 60 DAYS OR 90 DAYS. (D) WE CAN AMEND THE BK/O TO EXCLUDE THE POSSIBILITY OF SOVIET AND EASTERN EUROPEANS DUCKING ACROSS TO EAST BERLIN EVERY 31 DAYS FOR 24 HOURS AND THEN RETURNING TO THE WEST TO BEGIN A NEW 31-DAY RESIDENCE PERIOD IN

THE WEST AS IS PRESENTLY POSSIBLE UNDER THE BK/O.
IN OUR OPINION NONE OF THE FIRST THREE ALTERNATIVES DESCRIBED ABOVE ARE DESIRABLE. EACH PROVIDES SOVIETS WITH A SIMPLE MEANS OF GETTING AROUND PROBLEM OF OBTAINING FRG VISA FOR THEIR CITIZENS ANTICIPATING PROLONGED STAY IN WEST BERLIN, THEREBY UNDERCUTTING FRG EFFORTS TO GET SOVIETS TO ACKNOWLEDGE FRG RIGHT TO REPRESENT WEST BERLIN ABROAD, A PRINCIPLE ALLIES HAVE SUPPORTED FOR YEARS. ANY OF THESE OPTIONS WOULD ALSO DEFEAT PURPOSE OF BK/O(67)7 WHICH WAS ORIGINALLY CONFIDENTIAL

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PUT INTO EFFECT TO MAKE POSSIBLE LIMITED EAST-WEST CONTACT, AND TO PRECLUDE SOVIET PROTESTS THAT THEIR RIGHT OF FREE ACCESS WAS BEING BLOCKED BY WEST BERLIN LAW, BUT WAS NEVER INTENDED TO GIVE SOVIETS OR EAST EUROPEANS MEANS FOR COMPLETELY CIRCUMVENTING PROVISIONS OF GERMAN "PASSGESETZ" (FRG GESETZ UEBER DAS PASSWESEN,) TAKEN OVER IN BERLIN MANTELGESETZ IN 1952.

7. FOURTH ALTERNATIVE ABOVE COULD BE PUT INTO EFFECT BY AMENDING BK/O TO REQUIRE VISITOR MAKING USE OF PROVISIONS OF PARA 2 OF BK/O(67)7 PERMITTING SHORT VISIT WITHOUT VISA, TO REMAIN OUTSIDE WEST BERLIN FOR PROLONGED PERIOD BEFORE BEING PERMITTED OPPORTUNITY TO MAKE RENEWED USE OF THAT PROVISION. UK MISSION IN BERLIN HAS ALREADY INFORMALLY PROPOSED THAT WE SEEK TO AMEND BK/O IN THIS MANNER, REQUIRING INDIVIDUALS SEEKING TO MAKE USE OF PARA 2 OF THE BK/O TO REMAIN OUTSIDE WEST BERLIN FOR TWO MONTHS BEFORE BEING PERMITTED TO AVAIL THEMSELVES OF THOSE PROVISIONS A SECOND TIME. PRACTICAL EFFECT OF THIS AMENDMENT WOULD BE TO PRELUDE SOVIETS GETTING AROUND PURPOSE OF BK/O(67)7 BY FLITTING ACROSS WALL EVERY TIME THEIR 31-DAY VISIT WAS ABOUT TO EXPIRE. WHETHER IT WOULD ACTUALLY FORCE SOVIETS (OR EAST EUROPEANS) TO ACCEPT FRG VISAS FOR PROLONGED VISITS TO WEST BERLIN REMAINS PROBLEMATIC. THEY MIGHT FIND THAT EASIER, HOWEVER, THAN OTHER ARRANGEMENTS THEY WOULD HAVE TO ADOPT, SUCH AS RESIDING IN EAST BERLIN AND COMMUTING DAILY TO THE WEST.

8. WE SUPPORT THE BRITISH MISSION PROPOSAL TO AMEND BK/O(67)7 ALONG LINES OF ALTERNATIVE FOUR (4) ABOVE, BUT FEEL SUBJECT SHOULD BE GIVEN AIRING IN BONN GROUP SO AS TO PERMIT FRG VIEWS AND VIEWS OF CAPITALS TO BE TAKEN INTO CONSIDERATION AS WELL.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: REPORTS, CONSTRUCTION, EXHIBITS, ENTRY VISAS, DIPLOMATIC PROTESTS
Control Number: n/a
Copy: SINGLE
Draft Date: 20 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USBERL02718
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760466-0668
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761226/aaaaawsk.tel
Line Count: 281
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 USBERLIN 2364, 76 USBERLIN 2636
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 26 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <26 APR 2004 by BoyleJA>; APPROVED <12 AUG 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SOVIET OBJECTION TO LAWS GOVERNING ENTRY AND RESIDENCE IN WEST BERLIN FOR SOVIET CITIZENS
TAGS: PFOR, WB, US, UK, FR, GE
To: STATE BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006